Supreme Court, U.S.
FILED
MAY 23 2003
OFFICE OF THE CLERK

No. 02-1674

In the Supreme Court of the United States

MITCH MCCONNELL, UNITED STATES SENATOR, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

THEODORE B. OLSON
Solicitor General
Counsel of Record

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

PAUL D. CLEMENT
Deputy Solicitor General

MALCOLM L. STEWART
GREGORY G. GARRE
Assistants to the Solicitor General

DOUGLAS N. LETTER
JAMES J. GILLIGAN
MICHAEL S. RAAB
DANA J. MARTIN
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

LAWRENCE H. NORTON
General Counsel

RICHARD B. BADER
Associate General Counsel

STEPHEN E. HERSHKOWITZ
DAVID KOLKER
Assistant General Counsels
Federal Election Commission
Washington, D.C. 20463

QUESTIONS PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented by this appeal are as follows:

1. Whether the limitations on political parties imposed by Section 101 of BCRA are constitutional.

2. Whether BCRA's funding limitations and disclosure requirements pertaining to "electioneering communications" are constitutional.

3. Whether the district court correctly held that appellants' challenges to Sections 212, 214(b) and (c), and 305 of BCRA are not justiciable at this time.

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RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

OPINIONS BELOW

The opinions of the district court are not yet reported. See J.S. App. 3a.

[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal (J.S. App. 1a-2a) and their jurisdictional statement were filed on May 2, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. The district court also held that the plaintiffs' challenges to certain BCRA provisions are not justiciable at the present time. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants challenge various rulings of the district court that (a) rejected some of appellants' constitutional challenges on the merits, or (b) held certain of their claims to be non-justiciable. As of this date, three other jurisdictional statements arising out of the same district court judgment are pending before this Court. See *National Rifle Association* v. *Federal Election Commission*, No. 02-1675; *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676 (see note 1, *supra*); *John McCain, United States Senator* v. *Mitch McConnell, United States Senator*, No. 02-1702.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see note 1, *supra*) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Appellees agree, however, that appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal.[2]

Appellants' jurisdictional statement summarizes the merits of their constitutional challenges to the various BCRA provisions that were placed at issue by their suit. As appellants recognize (see J.S. i, 8, 14, 15, 16), however, the district court found that certain of appellants' constitutional claims are not justiciable at this time. Although appellants state that they intend to challenge those justiciability rulings (see J.S. i, 14, 15, 16), their jurisdictional statement offers *no* explanation whatever—however brief—of why those holdings are wrong. As to those aspects of the district court's decision, appellants have therefore failed to identify any substantial question of federal law implicated by their

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[2] Contemporaneously with this response, appellees are filing a motion for expedited briefing schedule applicable to this appeal and to the other pending appeals (see p. 2, *supra*) from the district court's judgment in this case.

appeal. In order to facilitate expeditious resolution of this case in accordance with the statutory mandate, however, appellees do not seek dismissal of the appeal, or summary affirmance of the district court's judgment, with respect to the court's justiciability rulings.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

ROBERT D. MCCALLUM, JR.
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